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 BARRY COHEN, CHRIS COHEN (aka CHRISTENE COHEN), the F/V POINT LOMA and
 Claimant, F/V POINT LOMA Fishing Company, Inc.

UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

DEL MAR SEAFOODS, INC.,
 Plaintiff,

v.

BARRY COHEN, CHRIS COHEN (aka
 CHRISTENE COHEN), *in personam* and,
 F/V POINT LOMA, Official Number
 515298, a 1968 steel-hulled, 126-gross ton,
 70.8 foot long fishing vessel, her engines,
 tackle, furniture apparel, etc., *in rem*, and
 Does 1-10,
 Defendants.

No. C-07-2952-WHA

**DEFENDANTS' REPLY IN SUPPORT
 OF MOTION FOR A PROTECTIVE
 ORDER LIMITING THE
 DEPOSITION OF CHRISTENE
 COHEN PURSUANT TO FRCP 26(c)**

Date: January 3, 2008

Time: 8:00 a.m.

Place: Courtroom 9, 19th Floor

Pursuant to Civil Local Rule 7-1 and Fed. R. Civ. P. 26(c), Defendants, Barry A. Cohen
 and Chris Cohen (the "Cohens"), the vessel F/V POINT LOMA (the "Vessel") and Claimant F/V
 Point Loma Fishing Company, Inc. (collectively, "Defendants"), have filed a Motion for a
 Protective Order Limiting the Deposition of Christene Cohen ("Motion for Protective Order"). On
 December 26, 2007, Defendants filed an Opposition to the Motion. The Cohens submit this Reply
 to various points raised in that Opposition.

1. This case concerns a written Promissory Note and a Preferred Ship Mortgage on
 the Vessel securing that Note. The Cohens have stipulated to the fact that they signed both signed

1 the Note and the Mortgage and that they made a \$175,000 advance payment to Plaintiff on the
2 Note. It is therefore not necessary to depose Mrs. Cohen on these essential facts.

3 2. Plaintiff asserts that additional amounts were added to the Note through oral
4 agreements entered into by Mr. Cohen and representatives of the Plaintiff, Del Mar Seafoods, Inc.,
5 Mr. Joseph Roggio and Mr. Joseph Cappuccio. In their recent depositions, Mr. Roggio and Mr.
6 Cappuccio stated, under oath, that neither of them had any business dealings with Mrs. Cohen
7 with respect to these matters. See Declaration of Gwen Fanger in Support of Motion, at ¶ 11 and
8 12, citing to the deposition transcripts at Ex. K and L.

9 3. Plaintiff has acceptable alternatives with respect to obtaining discoverable
10 information relating to the oral agreements in question and the damages to the Cohens caused by
11 the arrest of the Vessel. Mr. Cohen, who was responsible for the Vessel's management, will be
12 deposed in early January, 2008. Another source of information with respect to the Vessel is the
13 Captain, who will be deposed on January 8, 2008.

14 4. Both Mr. and Mrs. Cohen have stated they plan to assert their marital privileges
15 against disclosure of any dealings between and among them with respect to the issues in this case
16 in any deposition. By asserting the privileges in their Declarations in Support of the Motion, both
17 Mr. and Mrs. Cohen have asserted their right to confidentiality in their discussions.

18 5. Plaintiff, in searching for reasons to oppose the Motion, comes up with the
19 following arguments (Plaintiff's Opposition at 5) as to the information supposedly only Mrs.
20 Cohen can provide, to which Defendants reply.

21 a. Amount secured by the Note. The Note speaks for itself. Mrs. Cohen's
22 testimony will not be admissible, under the parol evidence rule, to vary the terms of the written
23 agreement. Because Plaintiff cannot establish that she did anything other than sign the Note, they
24 have no compelling reason to depose her on the issue.

25 b. Any oral agreements by Mr. Cohen with respect to Advances. Again,
26 because the representatives of Plaintiff have already stated that Mrs. Cohen had no business
27 dealings with the company on the issues at hand, any questions on this point would be confidential
28

1 discussions between husband and wife with respect to such advances. Plaintiff has alternative
2 sources for such information.

3 c. Effect of the \$175,000 payment on the monthly payments under the Note.

4 This is strictly a legal question, to which Mrs. Cohen need provide not respond.

5 d. Defendants' Claim for Damages. Mr. Cohen, and the Captain of the Vessel,

6 will be providing answers to these questions. Mr. Cohen was the manager of the Vessel, not Mrs.
7 Cohen.

8 6. Contrary to Plaintiff's claim, Defendants conferred in good faith to try to resolve
9 the issue of Mrs. Cohen's deposition. In response, Plaintiff's counsel posed numerous inquiries
10 that had to be answered before even considering the request. Because of the testimony of
11 Plaintiff's representatives, it became clear that Mrs. Cohen deposition was not likely to add
12 anything to the case but would offer opportunities for Plaintiff to go on "fishing expeditions" into
13 matters totally unrelated to this lawsuit and its expense would far outweigh its discovery and
14 evidentiary value. In fact, much of Plaintiff's discovery appears aimed to investigating reasons as
15 to why the Vessel should be seized, investigations that should have taken place prior to the
16 Vessel's arrest by this Court. Mrs. Cohen's discussions, if any, with her husband on these matters
17 would be strictly between them, protected by the marital privilege.

18 DATED this 26th day of December, 2007.

19
20 Respectfully submitted,

21 /s/ James P. Walsh

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